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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,179	03/19/2002	Lydie Bougueret	44.US4.DIV	2980
23557	7590	08/24/2004	EXAMINER	
SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION 2421 N.W. 41ST STREET SUITE A-1 GAINESVILLE, FL 32606-6669			KATCHEVES, KONSTANTINA T	
		ART UNIT		PAPER NUMBER
		1636		
DATE MAILED: 08/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/071,179

**Applicant(s)**

BOUGUELERET, LYDIE

**Examiner**

Konstantina Katcheves

**Art Unit**

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply****A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 02 June 2004.  
2a) This action is **FINAL**.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 30-64 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 30-38,40-48,50-52,56 and 59 is/are rejected.  
7) Claim(s) 39,49,53-55,57,58 and 60-62 is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 07 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date 12/27/2002.

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 30-64 are pending in the present application.

### ***Election/Restrictions***

Applicant's election without traverse of Group III in the reply filed on 18 May 2004 is acknowledged. Accordingly, claim 30 and new claims 31-62 are under examination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by AAR33389 (15 July 1993).

Claim 30 is drawn to a polypeptide comprising a contiguous span of at least six amino acids of SEQ ID NO:29.

Accession Number AAR33389 discloses a contiguous span of at least six amino acids.

Claims 30, 38 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number H38848 (16 February 1995).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:6.

Accession Number H38848 discloses the sequence of SEQ ID NO:6

Claims 30, 38 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number H22266 (06 July 1995).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:7.

Accession Number H22266 discloses the sequence of SEQ ID NO:7.

Claims 30, 38 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number AA249163 (11 March 1997).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:8.

Accession Number AA249163 discloses the sequence of SEQ ID NO:8.

Claims 30, 38 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number W37603 (10 October 1996).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:9.

Accession Number W37603 discloses the sequence of SEQ ID NO:9.

Claims 30, 38 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number H22303 (06 July 1995).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:10.

Accession Number H22303 discloses the sequence of SEQ ID NO: 10.

Claims 30, 38 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number H43964 (31 July 1995).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO: 11.

Accession Number H43964 discloses the sequence of SEQ ID NO:11.

Claims 30, 31, 38 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number AA262427 (13 August 1997).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:12.

Accession Number AA262427 discloses the sequence of SEQ ID NO:12.

Claims 30, 38 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number W84569 (17 October 1996).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:13.

Accession Number W84569 discloses the sequence of SEQ ID NO:13.

Claims 30, 38 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number W84569 (17 October 1996).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:14.

Accession Number W84569 discloses the sequence of SEQ ID NO:14.

Claims 30, 38 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number R14337 (12 April 1995).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:16.

Accession Number R14337 discloses the sequence of SEQ ID NO:16.

Claims 30, 38 and 51 are rejected under 35 U.S.C. 102(a) as being anticipated by Accession Number AA713956 (22 January 1998).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:17.

Accession Number AA713956 discloses the sequence of SEQ ID NO:17.

Claims 30, 38 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number R20183 (17 April 1995).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:18.

Accession Number R20183 discloses the sequence of SEQ ID NO:18.

Claims 30, 38 and 56 are rejected under 35 U.S.C. 102(a) as being anticipated by Accession Number AA082927 (23 December 1997).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:22.

Accession Number AA082927 discloses the sequence of SEQ ID NO:22.

Claims 30, 38 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Accession Number AA249450 (11 March 1997).

The invention of the instant claims is drawn to a fragment encoded by SEQ ID NO:25.

Accession Number AA249450 discloses the sequence of SEQ ID NO:25.

***Claim Rejections - 35 USC § 112***

Claims 30-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The written description requirement is established by 35 U.S.C. 112, first paragraph which states that the: “*specification* shall contain a written description of the invention. . .[emphasis added].” A specification must convey to one of skill in the art that “as of the filing date sought, [the inventor] was in possession of the invention.” See *Vas Cath v. Mahurkar* 935 F.2d 1555, 1560 19 USPQ2d 1111, 1117 (Fed. Cir. 1991).

Applicant may show that he is in “possession” of the invention claimed by describing the invention with all of its claimed limitations “by such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.”

See *Lockwood v. American Airlines Inc.* 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

The present claims are drawn to an isolated and purified polypeptide comprising a span of at least six amino acids of SEQ ID NO:29 and an isolated and purified polypeptide comprising a span of at least forty amino acids of SEQ ID NO:29. The instant claims are drawn to a very broad genus of sequence for which applicant has not provided adequate written description. These sequences can comprises any any sequence along the length of the one thousand three hundred twelve (1312) amino acid residues of SEQ ID NO:29. Applicant has not provided adequate description of what sequences are representative of this genus. The specification fails to provide adequate disclosure of relevant identifying characteristics or motif that define this broad genus represented by this very broad genus of molecules. In other words, the specification does not disclose

how the structures of these sequences relate to their function or to the genus as a whole. The specification therefore fails to describe the genus in terms of partial structure or relevant identifying characteristics. Absent such teachings and guidance, the specification does not describe the claimed fragments of SEQ ID NO:29 in such full, clear, concise and exact terms so as to indicate that Applicant had possession of these molecules at the time of filing of the present application. Thus, the written description requirement has not been satisfied.

*Allowable Subject Matter*

Claims 39, 49, 53-55, 57, 58, and 60-~~62~~<sup>64</sup> are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konstantina Katcheves whose telephone number is (571) 272-0768. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday 7:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel, Ph.D. can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Konstantina Katcheves  
Examiner  
Art Unit 1636